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IN THE
COURT OF APPEALS OF INDIANA

PHYLLIS WILSON, Personal Representative of the ESTATE OF VERLIE L. TUCKER, and ROBERT H. TUCKER,	)	
Appellants-Plaintiffs,	)	
vs.	)	No. 18A02-0609-CV-738
DEAN MEYERS and EDWARD D. JONES & COMPANY, L.P.,	)	
Appellees-Defendants.	)	

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Marianne Vorhees, Judge
Cause No. 18C01-0604-CP-13

June 22, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellants-plaintiffs Phyllis Wilson, as the personal representative of the Estate of Verlie L. Tucker (the Estate), and Robert Tucker (Robert) (collectively, the appellants) appeal from the trial court's grant of summary judgment in favor of appellees-defendants Dean Meyers and Edward D. Jones & Company, L.P. (Edward Jones) (collectively, the appellees). Specifically, the appellants argue that the trial court erred by concluding that their claims were barred because they should have brought them in a previous suit between these parties. Finding that the trial court properly concluded that the appellants' claims were precluded under the principle of res judicata, we affirm the judgment of the trial court.

FACTS

On October 30, 1992, Verlie purchased an annuity contract from Meyers[1] and designated her sister, Betty Stonecipher, as the annuity beneficiary upon Verlie's death. The annuity contract was issued by Hartford Life and Annuity Insurance Company (Hartford). On May 17, 1995, at the age of seventy-eight, Verlie was diagnosed with moderate to moderately severe Alzheimer's disease.

In the fall of 1995, Meyers met with Verlie, Betty, and Ruth Brookman to discuss the annuity. Verlie told Meyers that she wanted Betty to remain the beneficiary of the annuity until Betty's death but that if Betty predeceased Verlie, Verlie wanted Ruth to become the beneficiary. Shortly thereafter, Meyers prepared an undated, unsigned letter addressed to Hartford and sent it to Verlie for her signature:

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[1] At all times relevant to this action, Meyers was an employee of Edward Jones, a national investment brokerage firm with an office in Muncie.

> Please use this as authorization to change the beneficiary of my annuity. My sister, Betty Stonecipher has predeceased me just recently and I wish to change the beneficiary to Ruth E. Brookman. . . . Thank you for your attention to this matter. Any other questions my [sic] be directed to our representative, [Meyers].

Appellants' App. p. 65. A copy of the letter with Verlie's signature was returned to Meyers shortly thereafter (the Letter). Meyers placed a copy of the Letter in Verlie's file.

Betty died in February 1996. On March 22, 1996, Meyers dated the signed Letter and mailed it to Hartford. On April 24, 1996, Suzanne Stonecipher—Betty's daughter—wrote a letter to Hartford requesting that Robert—Verlie's husband—be named the annuity beneficiary instead of Ruth. Specifically, Suzanne alleged that Verlie was not mentally capable of knowingly executing the Letter that named Ruth as the beneficiary. Verlie died on December 3, 1997.

I. Original Litigation

On September 14, 1998, Hartford filed an interpleader complaint (the original litigation) against Robert, Ruth, Suzanne, and Bertha Burnett[2] as the personal representative of the Estate (collectively, the Annuity Claimants). In its complaint, Hartford admitted that the annuity proceeds were due but stated that it was "uncertain as to whom it should pay the proceeds, and [Hartford] cannot pay over such proceeds, except under the direction of this court, without assuming the risk of multiple liability for such payment." Appellants' App. p. 27. Therefore, Hartford requested that it be allowed to deposit the annuity proceeds—

[2] Wilson became the personal representative of the Estate on July 6, 1999.

$97,096.23 plus interest—with the clerk of the court pending the trial court's resolution of the case.

On January 22, 1999, the trial court granted Hartford's request and dismissed Hartford from the original litigation. The litigation continued between the Annuity Claimants and on October 2, 2000, the appellants filed a counterclaim, crossclaim, and complaint for spoliation of evidence against Ruth, Hartford, and the appellees (the spoliation complaint). The spoliation complaint alleged that the authenticity of the Letter was the "primary issue" in the case but that Hartford and the appellees had advised Robert, Suzanne, and the Estate that the original copy of the Letter was no longer available. Id. at 61. Specifically, the appellants alleged that Ruth, Meyers, and/or Hartford had negligently or intentionally lost or destroyed the Letter and that their actions prejudiced the appellants because they could not have the Letter professionally examined to determine its authenticity.

On May 30, 2001, the appellees filed a notice of discovery compliance and submitted a copy of the Letter, which had been found in another client's file.[3] On September 14, 2001, the appellees filed their motion for summary judgment. On March 22, 2001, Hartford filed a motion to dismiss the counterclaim against it. On October 12, 2001, the Estate filed a verified motion for change of judge, which resulted in the original litigation being assigned to the Honorable Peter D. Haviza on October 24, 2001.

[3] The appellants' complaint in the current litigation states that the letter produced on May 30, 2001, was a photocopy of the March 22, 1996, Letter "copied onto Edward Jones letterhead and to which a forged signature of Verlie L. Tucker was affixed." Appellants' App. p. 80.

On February 8, 2002, the Estate filed a motion for summary judgment. A hearing was held on June 19, 2002, and the trial court took the matter under advisement. On August 12, 2002, the trial court entered summary judgment in favor of the Estate and ordered that the annuity proceeds be paid to the Estate. None of the parties filed a motion to correct error or appealed the trial court's summary judgment order; thus, the original litigation ended and the annuity proceeds were paid to the Estate.

II. Current Litigation

On September 27, 2002, the Estate filed a complaint (the current litigation) against the appellees, alleging fraud and civil violations of Indiana's Racketeer Influenced and Corrupt Organizations Act (RICO).[4] The appellants' complaint focuses on Meyers's alleged forgery of the Letter as an Edward Jones employee and argues that "as a direct result of the fraudulent acts of [the appellees]" the original litigation cost the Estate $29,250 and Tucker $14,618.75 in attorney fees and that the appellants are entitled to $500,000 in punitive damages, treble damages, and attorney fees related to the current litigation. Appellants' App. p. 80.

On August 6, 2004, the appellants filed a motion to transfer documents from the original litigation to the current litigation's case file. A hearing was held on September 8, 2004, and the parties agreed to transfer various depositions and documents from the original litigation into evidence for the current litigation.

[4] Ind. Code §§ 35-45-6-1 et seq.

The appellees filed a motion for summary judgment on September 10, 2004, arguing that the appellants' claims were frivolous and barred by the principle of res judiciata. The appellants filed a motion in opposition to summary judgment on October 25, 2004. On November 9, 2004, the appellees filed a motion to strike various portions of the appellants' designated evidence, which the appellees alleged were irrelevant, not properly authenticated, and based on inadmissible hearsay. The trial court held hearings on the motion to strike on November 10, 2004, January 12, 2005, and March 2, 2005, and took the matter under advisement.

On March 15, 2006, after more than a year had passed without a ruling from the trial court, the appellants filed a praecipe for withdrawal of submission pursuant to Indiana Trial Rule 53.1, requesting that the trial court withdraw the current litigation from the Honorable Wayne Lennington because he had not ruled on a pending motion in a timely manner. The motion was granted on April 13, 2006, and the current litigation was assigned to the Honorable Marianne Vorhees.

The trial court held a hearing on the pending motions on July 18, 2006, and the parties agreed to allow the trial court to rule based upon the prior record and party submissions. On August 1, 2006, the trial court entered its findings of fact, conclusions of law, and order in favor of the appellees without explicitly ruling on the appellees' motion to strike. In relevant part, the trial court ruled:

> 6. The Complaint alleges the acts took place on dates prior to Special Judge Haviza's summary judgment ruling [in the original litigation] on August 12, 2002.
>
> ***

7. [The appellees] have filed a motion for summary judgment in this action, alleging this Court should enter judgment in their favor on several grounds, most significantly the fact that res judicata applies. The Estate's counter-argument, in short, is [that] the claim for attorney's fees and personal representative fees was a permissive counterclaim, not a compulsory counterclaim, and so the Estate did not have to raise it in the prior action.

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9. The doctrine of res judicata bars claims when the following requirements are met:

a. a court of competent jurisdiction rendered the former judgment
b. the court rendered the judgment on the merits
c. the matter now in issue, was, or could have been determined in the prior action; and
d. the controversy adjudicated in the prior action must have been between the same parties to the present suit or their privies

Richter v. Asbestos Insulating & Roofing, 790 N.E.2d 1000, 1002 (Ind. Ct. App. 2002).

10. In the case Small v. Centocor, Inc., 731 N.E.2d 22 (Ind. Ct. App. 2000), a plaintiff in a medical malpractice action concerning his father's death in the defendant hospital did not prevail on his medical malpractice claim. The plaintiff then filed a separate action raising issues related to the same hospitalization and death, alleging defendants had committed fraud and deceit during their treatment of his father. The Court of Appeals held res judicata applied, barring the second action because

> the issues and claims Small raised in the first action are also part of this second action. Additionally, Small's claims of fraud and deceit were necessarily premised on [the father's] treatment and hospitalization, and are thus inextricably woven to the first claim such that these claims could have been or, more appropriately should have been, determined in the first action.

Small, 731 N.E.2d at 27.

11. Likewise, in this case, the facts surrounding [the appellees'] alleged fraudulent conduct were very well known to the parties in the original action,

and the Estate did not decide to pursue any claim against those parties in that action. The claims in this case are "inextricably woven" to the claims before Special Judge Haviza [in the original litigation] and should have been determined in that action.

12. To allow this second action to proceed would cause the parties to relitigate the issues and facts already litigated before Special Judge Haviza. This is one result the res judicata doctrine intends to prevent, relitigation of the same facts between the same parties. The doctrine also seeks to prevent parties from raising issues they could have raised in a prior litigation in a separate action.

13. Parties to a lawsuit frequently make a claim for attorneys' fees incurred in the event they prevail in the action. They reserve the right to file a fee affidavit or some other document to present their claim for fees after the court or jury has ruled on the merits. Plaintiffs have not stated why they did not or could not have done this in the [original litigation]. Plaintiffs' arguments that their claim for fees and expenses was a "permissive" rather than a "compulsory" counterclaim does not address the res judicata issue: regardless of how the court would classify the counterclaim, it was still a claim that Plaintiffs had in the prior case which they should have raised in the prior case.

14. The Motion for Summary Judgment filed by [the appellees] is well taken and should be granted.

Appellants' App. p. 15-18 (emphasis in original). The appellants now appeal.

DISCUSSION AND DECISION[5]

I. Standard of Review

[5] As noted above, the trial court did not explicitly rule on the appellees' motion to strike portions of the appellants' designated evidence. Although the trial court did not reference any of the materials in question when ruling on the appellees' motion for summary judgment, the appellees filed a motion to strike with our court because, as they argue, the appellants' "Appendix contains numerous documents which were subject to [appellees'] Motion to Strike, and the Appellants' Brief makes numerous references to the documents and information contained therein. Since these documents would not have been admissible at the Trial Court, they should not [be] admissible to determine this case on appeal." Appellees' Motion to Strike p. 7.

While the appellees move to strike twenty-one pieces of the appellants' designated evidence, the majority of the appellees' objections are extremely broad—e.g., that various depositions and reports contain "inadmissible hearsay" even though the appellees do not cite specific statements within the evidence. Id. at 2-5. The remainder of the appellees' objections focus on the authenticity of various documents, and we find

Summary judgment is appropriate only where the evidence shows that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C); Am. Home Assurance Co. v. Allen, 814 N.E.2d 662, 666 (Ind. Ct. App. 2004). A party seeking summary judgment bears the burden of making a prima facie showing that there are no genuine issues of material fact and that the party is entitled to judgment as a matter of law. Tack's Steel Corp. v. ARC Constr. Co., Inc., 821 N.E.2d 883, 888 (Ind. Ct. App. 2005). A factual issue is "genuine" if it is not capable of being conclusively foreclosed by reference to undisputed facts. Am. Mgmt., Inc. v. MIF Realty, L.P., 666 N.E.2d 424, 428 (Ind. Ct. App.1996). Although there may be genuine disputes over certain facts, a fact is "material" when its existence facilitates the resolution of an issue in the case. Id.

When we review a trial court's entry of summary judgment, we are bound by the same standard that binds the trial court. Id. We may not look beyond the evidence that the parties specifically designated for the motion for summary judgment in the trial court. Best Homes, Inc. v. Rainwater, 714 N.E.2d 702, 705 (Ind. Ct. App. 1999). We must accept as true those facts alleged by the nonmoving party, construe the evidence in favor of the nonmovant, and resolve all doubts against the moving party. Shambaugh & Son, Inc. v. Carlisle, 763 N.E.2d 459, 461 (Ind. 2002). On appeal, the trial court's order granting or denying a motion for summary judgment is cloaked with a presumption of validity. Sizemore v. Erie Ins. Exch.,

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that the evidence in the record and the appellants' responses are sufficient to demonstrate the authenticity. Therefore, we deny appellees' motion to strike.

789 N.E.2d 1037, 1038 (Ind. Ct. App. 2003). A party appealing from an order granting summary judgment has the burden of persuading us that the decision was erroneous. Id. at 1038-39.

A grant of summary judgment may be affirmed upon any theory supported by the designated evidence. Bernstein v. Glavin, 725 N.E.2d 455, 458 (Ind. Ct. App. 2000). While the trial court here entered specific findings of fact and conclusions of law in its order granting summary judgment for the appellees, such findings and conclusions are not required and, while they offer valuable insight into the rationale for the judgment and facilitate our review, we are not limited to reviewing the trial court's reasons for granting or denying summary judgment. Id.

II. Res Judicata

"As we stated over half a century ago, 'It is a general policy of the law that courts refuse to grant negligent litigants a second opportunity to present the merits, if any, of their case.'" Smith v. Lake County, 863 N.E.2d 464, 470 (Ind. Ct. App. 2007) (quoting Novak v. Novak, 126 Ind. App. 428, 433, 133 N.E.2d 578, 581 (1956), superseded by statute on other grounds). Res judicata serves to prevent the litigation of disputes that are essentially the same, and the doctrine consists of two distinct components: claim preclusion and issue preclusion. Dawson v. Estate of Ott, 796 N.E.2d 1190, 1195 (Ind. Ct. App. 2003).

> Claim preclusion is applicable when a final judgment on the merits has been rendered and acts to bar a subsequent action on the same claim between the same parties. When claim preclusion applies, all matters that were or might have been litigated are deemed conclusively decided by the judgment in the prior action." Claim preclusion applies when the following four factors are present: (1) the former judgment was rendered by a court of competent

> jurisdiction; (2) the former judgment was rendered on the merits; (3) the matter now at issue was, or could have been, determined in the prior action; and (4) the controversy adjudicated in the former action was between parties to the present suit or their privies.

Id. (emphases added) (citations omitted); see also Hammond Pure Ice & Coal Co. v. Heitman, 221 Ind. 352, 358-59, 47 N.E.2d 309, 311 (1943) ("It has been many times held by this court that the doctrine of res adjudicata embraces not only what was actually determined, but every matter which the parties could have had litigated in the cause. The judgment in the former case is conclusive and bars a subsequent action if an opportunity was presented to litigate the entire subject matter in the first action.")

Here, the appellants do not dispute that the original litigation was rendered by a court of competent jurisdiction on the merits or that it involved the same "cast of characters" as the current litigation. Appellants' Br. p. 16. Instead, the appellants focus on the elemental differences between the spoliation claim they raised in the original litigation and the fraud and RICO claims they raise in the current litigation. Specifically, the appellants argue that

> [t]o win the spoliation claim the Tucker Estate had to show that the March 22, 1996 beneficiary letter was lost by Meyers or [Edward Jones], they had a duty to preserve it, and the lost letter damaged the Tucker Estate. The Tucker Estate's fraud and civil RICO claims deal with completely different evidence [namely, the appellees' intent], albeit the cast of characters remains the same.

Id.

Although we agree with the appellants that the elements of their fraud and RICO claims vary from the spoliation claim that they asserted in the original litigation, we have previously barred litigants from bringing claims that are so "inextricably woven" to claims brought in prior litigation that they should have been raised therein. Richter, 790 N.E.2d at

1003. In determining whether res judicata should apply, we have held that it is helpful to inquire whether identical evidence will support the issues involved in both actions. Id.

As the appellants admit, they "contested Ruth's right to the annuity proceeds" from the inception of the original litigation because they "believed that the [Letter] was not genuine." Appellants' Br. p. 4. Furthermore, the appellants thrust the authenticity of the Letter into the spotlight in the original litigation by filing the October 2, 2000, spoliation complaint, which argued that "the primary issue between the defendants in resolving the entitlement to the proceeds is [the Letter]." Appellants' App. p. 61. The appellees filed a notice of discovery compliance on May 30, 2001, and submitted a copy of the Letter that was alleged to be an original. The original litigation continued for approximately fifteen months before the trial court entered summary judgment in favor of the Estate and ruled that it was entitled to the annuity proceeds.

In the current litigation, the appellants' complaint focuses on Meyers's alleged forgery of the Letter and argues that the appellants suffered damages "as a direct result of the fraudulent acts of [the appellees,]" stemming from the creation and distribution of the Letter. Id. at 80. Specifically, the appellants seek the attorney fees that they incurred during the original litigation, $500,000 in punitive damages, treble damages, and any attorney fees incurred during the current litigation. While the specific claims raised by the appellants in the current litigation—fraud and civil RICO violations—vary from their earlier claims, the current claims stem from the same events, rely on the same evidence, and involve the same parties as the original litigation. In fact, one of the remedies that the appellants now request

is that they be reimbursed for the attorney fees incurred during the original litigation.

As noted above, in determining whether res judicata should apply, it is helpful to inquire whether identical evidence will support the issues in both actions. Richter, 790 N.E.2d at 1003. Here, it is telling that the appellants filed a motion to transfer documents from the original litigation to the case file of the current litigation so that those documents could be used as evidence supporting their new claims. That motion makes it clear that the appellants understood that their new claims stemmed from the same evidence used in the original litigation.

The appellants do not direct us to new evidence that has been discovered since the original litigation or attempt to explain why they did not—or could not—have brought their current claims against the appellees in the original litigation. In fact, the appellants' decision to file the spoliation complaint against the appellees during the original litigation confirms that the trial court in that action was in the prime position to determine any issues related to the Letter because, as the appellants argued, the Letter was the "primary issue" in that litigation. Id. at 61. The appellants' current claims stem from the events surrounding the creation and distribution of the allegedly forged Letter, and all parties agree that those events occurred during 1995 and 1996—well before the original litigation ended in 2002.

In sum, the appellants do not convincingly explain why they could not have brought their current claims against the appellees during the original litigation, and we find that their current claims are inextricably woven to the claims from the original litigation. Because the appellants' current claims could have been or, more appropriately, should have been

determined by the trial court in the original litigation, we find that the doctrine of res judicata precludes the appellants from bringing these claims in a separate action. Therefore, the trial court properly granted summary judgment in favor of the appellees.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and CRONE, J., concur.